

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CRESCENCIO GALVEZ, CARMEN
ACUNA, and GUADALUPE
GALVEZ, individually and on behalf
of all others similarly situation,

Plaintiffs,

v.

TOUCH-TEL U.S.A., L.P. dba
TOUCH-TEL USA, LLC,

Defendant.

Case No.: 2:08-CV-05642 RGK (JCx)

STIPULATED PROTECTIVE
ORDER REGARDING USE AND
DISSEMINATION OF
CONFIDENTIAL DOCUMENTS
AND MATERIALS

CHANGES MADE BY COURT

In order to protect confidential information obtained from or disclosed by the respective parties in connection with this case, pursuant to the Court's authority under Fed. R. Civ. P. 26(c), the Court orders as follows:

I. PURPOSES AND LIMITATIONS

1. Disclosure and discovery activity in this action is likely to involve production of confidential information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protections outlined herein extend

1 only to the limited information or items that are entitled to treatment as
2 confidential under applicable legal principles.

3 2. This Protective Order creates no entitlement to file confidential
4 information under seal; Local Rule 79-5.1 sets forth the procedures that must be
5 followed, and reflects the standards that will be applied, when a party seeks
6 permission from the Court to file material under seal.

7 3. Documents and other information produced by the parties hereto in
8 connection with this action shall be used solely for purposes of prosecuting,
9 defending, or attempting to settle this action, whether such information is
10 designated "Confidential Information" or not. The protections outlined in this
11 Order, however, apply only to confidential information which has been
12 appropriately designated as such.

13 **II. NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

14 4. Except with the prior written consent of the party or non-party
15 originally designating a document as "Confidential," or as hereinafter provided
16 under this Protective Order, confidential information as defined herein may not be
17 disclosed to any person.

18 **III. DESIGNATING CONFIDENTIAL MATERIAL**

19 5. Any party or non-party may designate as confidential (by stamping
20 the relevant page "Confidential" or as otherwise set forth herein) any document or
21 response to discovery which that party or non-party ("Disclosing Party") considers
22 in good faith to contain information involving trade secrets or personal identifying
23 or financial information subject to protection under California or federal law
24 ("Confidential Information"). Where a document or response consists of more
25 than one page, the first page and each page on which Confidential Information
26 appears shall be so designated.

6. A party or non-party may designate information disclosed by it during a deposition or in response to written discovery as “Confidential” by so indicating in said responses or on the record at the deposition. Additionally, a party may designate in writing, within 20 days after receipt of said responses or of the deposition transcript for which the designation is proposed, that specific pages of the transcript and/or specific responses be treated as Confidential Information. Any other party may object to such proposal, in writing or on the record. Upon such objection, the parties shall follow the procedures described in ¶¶ 11(a)-(f) below.

7. Each party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A disclosing Party must take care to designate for protection only those parts of material, documents, items or oral or written communications that qualify, so that other portions of the material, documents, items or communications for which protection is not warranted are not swept within the ambit of this Order.

8. If it comes to a Disclosing Party’s attention that information or items that it designated for protection do not qualify for protection, the Disclosing Party must promptly notify all other parties that it is withdrawing the mistaken designation.

9. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” does not, standing alone, waive the designating party’s right to secure protection under this Order for such material. If material is appropriately designated as “Confidential” after the material was initially produced, the receiving party, on timely notification of the designation,

1 must make reasonable efforts to assure that the material is treated in accordance
2 with the provisions of this Order.

3 IV. PERMISSIBLE DISCLOSURES

4 10. Confidential Information that is designated as such in accordance with
5 the terms of this Protective Order shall not be disclosed to any person other than
6 the following, and only to the extent necessary to litigate for this action:

7 a. Counsel for the respective parties to this litigation, including in-
8 house counsel and co-counsel retained for this action;

9 b. employees of such counsel;

10 c. individual defendants, class representatives, or any officer or
11 employee of a party, to the extent deemed necessary by counsel for the prosecution
12 or defense of this action;

13 d. consultants or expert witnesses retained for the prosecution or
14 defense of this action, who execute a copy of the certification annexed to this
15 Protective Order as Exhibit A before being shown or given any Confidential
16 Information;

17 e. the original authors or recipients of the Confidential
18 Information;

19 f. the Court, court personnel and court reporters;

20 g. witnesses who may testify at deposition or at trial who execute
21 a copy of the certification annexed to this Protective Order as Exhibit A before
22 being shown or given any Confidential Information; and

23 h. persons or entities that provided litigation support services (*e.g.*,
24 photocopying; videotaping; translating; preparing exhibits or demonstrations;
25 organizing, storing, retrieving data in any form or medium; etc.) and their
26 employees and subcontractors who execute a copy of the certification annexed to
27

1 this Protective Order as Exhibit A before being shown or given any Confidential
 2 Information. Any certifications executed pursuant to this Paragraph shall not be
 3 discoverable except upon a showing of good cause.

4 **V. RESOLVING DISPUTED CLASSIFICATIONS**

5 11. Should a party wish to object to a Confidential designation of any
 6 material, that party shall make a written Designation Objection to the Disclosing
 7 Party, as set forth below:

8 a. Designation Objection: The objecting party shall identify with
 9 specificity (*i.e.*, by document control numbers, deposition transcript page and line
 10 reference, or other means sufficient to locate such materials) the disputed
 11 Confidential designation. A Designation Objection will trigger an obligation on
 12 the part of the Disclosing Party to make a good faith determination of whether the
 13 disputed designation(s) is entitled to be treated as Confidential Information
 14 pursuant to the terms of this Protective Order. Except in the case of a Designation
 15 Objection as to which a prompt reply would be impractical due to its volume,
 16 within ten (10) court days the Disclosing Party shall respond in writing to the
 17 Designation Objection either agreeing to remove the Confidential designation or
 18 the Disclosing Party's refusal to do so.

19 b. Court Determination: If the Disclosing Party refuses to agree to
 20 remove the Confidential designation pursuant to subsection (a) above, the
 21 Objecting Party may make a motion to the Court in conformance with Local Rules
 22 37, et seq. (which govern discovery motions) objecting to the Confidentiality
 23 designation.

24 c. In any proceeding on such an application, the Disclosing Party
 25 will bear the burden of demonstrating that the Confidential designation qualifies as
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1 Confidential Information. No presumption or weight will attach to the Disclosing
2 Party's initial designation.

3 d. Pending a ruling, the materials bearing the disputed designation
4 shall continue to be treated as Confidential Information under the terms of this
5 Protective Order.

6 e. With respect to Confidential designations that the parties agree
7 do not constitute Confidential Information, or which the Court orders not to be
8 treated as Confidential Information, within ten (10) days of such agreement or
9 order, the Disclosing Party shall produce a new version with the Confidential
10 Information legend redacted.

11 VI. CONFIDENTIAL INFORMATION AT TRIAL

12 12. The terms of this Protective Order do not preclude, limit, restrict, or
13 otherwise apply to the use of documents at trial. Any party may move the Court
14 for an order that the Confidential Information be received *in camera* or under other
15 conditions to prevent unnecessary disclosure.

16 VII. SUBPOENA BY OTHER COURTS OR AGENCIES

17 13. If at any time any Confidential Information is subpoenaed by a court,
18 administrative or legislative body, or by any other person or entity purporting to
19 have authority to require the production of such information, the person to whom
20 the subpoena is directed shall give written notice thereof to any person who has
21 designated such information as Confidential Information within ten (10) days, or
22 such lesser time as may be required by the subpoena. After receipt of the notice
23 specified under this paragraph, the person seeking to maintain confidentiality shall
24 have the sole responsibility for obtaining any order it believes necessary to prevent
25 disclosure of the Confidential Information that has been subpoenaed. If the person
26 seeking to maintain confidentiality does not move for a protective order within the
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1 time allowed for production by the subpoena (or within such time as a court may
 2 direct or as may be agreed upon between the designating person and the
 3 subpoenaing party) and give written notice of such motion to the subpoenaing
 4 party and the person to whom the subpoena is directed, the person to whom the
 5 subpoena or other request is directed may commence production in response
 6 thereto. The person to whom the subpoena is directed shall not produce any
 7 Confidential Information while a motion for a protective order brought pursuant to
 8 this paragraph is pending, or while any appeal from or request for appellate review
 9 of such motion is pending, unless ordered by a court to do so. The Disclosing
 10 Party shall indemnify all fees or costs incurred if a court orders compliance
 11 pending such a determination or imposes sanctions for failure to provide such
 12 information.

13 **VIII. FILING DOCUMENTS UNDER SEAL**

14 14. No Confidential Information shall be filed in the public record without
 15 the written permission of the Disclosing Party, or a court order. The parties shall
 16 comply with Local Rule 79-5.1 in obtaining the order. More specifically, a party
 17 that files with the Court materials designated as Confidential Information, and who
 18 seeks to have the record containing such information sealed, shall also submit to
 19 the Court a motion to seal pursuant to Local Rule 79-5.1.

20 15. A party that files with the Court, or seeks to use at trial, materials
 21 designated as Confidential Information by anyone other than itself and who does
 22 *not* seek to have the record containing such information sealed, shall at the time of
 23 filing or use of the Confidential Information, file a motion to seal pending the
 24 Court's determination of appropriateness of sealing and submit the confidential
 25 portions of the materials under seal pending a ruling from the Court on the motion
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1 to seal. The party that has designated the Confidential Information must meet its
2 burden as set forth in Local Rule 79-5.1 for the records to remain under seal.

3 16. This Protective Order shall apply to non-parties who are obliged to
4 provide discovery, by deposition, production of documents or otherwise, in this
5 litigation, if said non-party requests in writing the protection of this Protective
6 Order as to said non-party's Confidential Information, complies with the
7 provisions of this Protective Order, and agrees in writing to be bound by the terms
8 of this Protective Order.

9 **IX. NON-TERMINATION**

10 17. All provisions of this Protective Order restricting the communication
11 or use of Confidential Information shall continue to be binding after the conclusion
12 of this action, unless otherwise agreed or ordered. Upon the conclusion of the
13 litigation, including any appeals, within sixty (60) days of receiving notice from
14 the Disclosing Party, a party in the possession of Confidential Information, other
15 than that which is contained in pleadings, correspondence and deposition
16 transcripts, shall either (a) return such documents to counsel for the party or non-
17 party who provided such information, or (b) destroy such documents and certify in
18 writing that the documents have been destroyed.

19 **X. MODIFICATION PERMITTED**

20 18. Nothing in this Protective Order shall prevent any party or other
21 person from seeking modification of this Protective Order or from objecting to
22 discovery that it believes to be otherwise improper.

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XI. RESPONSIBILITY OF ATTORNEYS

19. The counsel for the parties are responsible for employing reasonable measures, consistent with this Protective Order, to control duplication of, access to and distribution of copies of Confidential Information.

20. The counsel for the parties are responsible for administering and keeping the executed original copy of Exhibit A pursuant to ¶¶ 10(d), (g), and (h) above and any written requests/agreements of non-parties pursuant to ¶ 16.

XII. NO WAIVER

21. Nothing contained in this Protective Order and no action taken pursuant to it shall prejudice the right of any party to contest the alleged relevancy, admissibility or discoverability of the confidential documents and information sought.

IT IS SO ORDERED.

DATED this 15th day of July, 2009.

/s/

Honorable Jacqueline Chooljian

UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM

Dated: June 29, 2009

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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of *Galvez, et al. v. Touch-Tel U.S.A., L.P. dba Touch-Tel USA, LLC*, Case No. CV 08-05642-RGK (JCx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

By: _____